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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

SUPPLEMENTAL OBJECTION TO MODIFIED SECOND AMENDED PLAN

(Related Docket Nos. 4476, 4704)

TO THE HONORABLE COURT:

COMES NOW Santa Rosa Mall, LLC (“Santa Rosa Mall”), by and through its undersigned counsel, and hereby objects to the *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors* (Docket No. 4476) as follows:

Background

1. On July 9, 2019, the Debtors filed a *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the “*First Modified Plan*”, Docket No. 4476), the *Disclosure Statement for Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors* (the “*Modified Disclosure Statement*”, Docket No. 4478) and a *Notice of Filing of (I) Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and Its Affiliated Debtors and (II) Related Disclosure Statement with Clarifying Modifications* (the “*Notice*”, Docket No. 4479).

2. On August 2, 2019, Santa Rosa Mall filed an *Objection to Modified Plan* (the “*Objection*”, Docket No. 4714). We incorporate by reference the *Objection* as if fully transcribed herein.

3. On even date, August 2, 2019, the Debtors filed another *Modified Second Amended Joint Chapter 11 Plan of Sears Holdings Corporation and its Affiliated Debtors* (the “*Second Modified Plan*”, Docket. No. 4704) (the *First Modified Plan* and the *Second Modified Plan* collectively referred to as the “*Modified Plan*”).

4. The hearing to consider confirmation of the *Modified Plan* is scheduled for September 18, 2019 at 10:00 AM. See Notice of Adjournment of Hearing, Docket No. 4807.

Applicable Law and Discussion

A. The Plan Improperly Deems Consent to Third-Party Releases

5. The *Modified Plan* improperly provides non-consensual third-party releases for the benefit of certain Released Parties, as further defined therein. See Docket No. 4704, § 15.9(b), pp. 82-83.

6. As set forth in Paragraph 9 of the *Objection*, “[w]hile Santa Rosa Mall has exercised its option to reject the [] *Plan* and opt out of the releases contained in Section 15.9 on the Ballots” it objected to the improper release and discharge of third parties “**in an abundance of caution**”. Docket No. 4714, ¶ 9 (emphasis added).

7. Pursuant to the *Second Modified Plan*, a “supplemental appendix to the [*Modified Plan*]” is to be filed with the Court “containing, among other things, [] a schedule listing individuals or Entities who are not Released Parties or Related parties as defined and/or used in Section 1.134, 1.135, 15.9(a), and 15.9(b).” Docket 4704, p. 19, § 1.125 (internal quotations omitted). Because said supplemental appendix has not been filed with the Court, Santa Rosa Mall cannot be certain whether Section 15.9(b) of the *Modified Plan* discharges and releases Aon UK Limited, Aon Risk Services Central, Inc. d/b/a/ Aon Risk Insurance Services Central, Inc., Aon Benefield Puerto Rico, and/or Aon Property Risk Consulting, Inc. (collectively, “Aon”); or Lex-London a Division of AIG Europe Limited, AIG Europe Limited, Lexington UK, among others (collectively, the “Underwriters”).

8. Accordingly, Santa Rosa Mall sustains its earlier objection and further objects to the releases contemplated in Section 15.9 of the *Modified Plan* until a clear answer is filed with the Court regarding who is and who is not released under the *Modified Plan*.

9. In addition to the releases, the *Modified Plan* permanently enjoins holders of claims and interests from pursuing claims against, *inter alia*, the Debtors. See Docket No. 4704, § 15.8, pp. 80-81. While Section 15.8 does not enjoin actions against third-parties, it enjoins actions asserted against or affecting the Debtors or Debtors' property, and from directly *or indirectly* recovering any judgment, award or decree from the property of the Debtors. An indemnity obligation may fall under such language. Accordingly, Santa Rosa Mall supplements its earlier objection to the injunction contained in Section 15.8 of the *Modified Plan* to the extent it interferes with Santa Rosa Mall's rights to pursue any action against third-party non-debtors including, *inter alia*, Aon and the Underwriters, on account of any statutory or contractual obligation between the Debtors and the aforementioned third-parties.

B. The Plan Is Not Proposed in Good Faith

10. As set forth in Paragraph 10-15 of the *Objection*, "[t]he totality of the circumstances in the instant case, reveals that the *Modified Plan* is not proposed in good faith." Docket No. 4714, ¶ 12 (emphasis added).

11. Neither the Debtors' *Modified Plan* and/or its supplement exhibits afford any information whatsoever as to the existence, status or whereabouts of the *Settlement Agreement* or the monies derived thereunder. Indeed, Debtors' liquidation analysis, on which the plan is based, exclude and/or otherwise do not disclose payments made to the Debtors under the *Settlement Agreement* and do not account for its distribution Santa Rosa Mall's proposed scenario in which the insurance proceeds for the damages caused by Hurricanes Irma and Maria are not part of the bankruptcy estate and/or part of the general fund available for distribution to all creditors.

12. In the process of settling the Hurricane Irma and Hurricane Maria losses and insurance claims, the Debtors intentionally misrepresented that they were the only party that had the right to file claims and demand payments under Policy No. PTNAM1701557, *inter alia*, and failed to comply with Fed. R. Bankr. P. 9019(a), which states that the court *may approve* a settlement *on motion* by the trustee or debtor-in-possession. See Fed. R. Bankr. P. 9019(a). No notice was ever filed with this Court and no motions were made seeking its approval. In *further failing to divulge* the *Settlement Agreement* and the

monies derived thereunder, the *Modified Plan* is not proposed in good faith.

Reservation of Rights

10. Santa Rosa Mall expressly reserves its right to amend or supplement this *Supplemental Objection to Modified Second Amended Plan* as may be appropriate.

Prayer for Relief

WHEREFORE, Santa Rosa Mall moves the Court to take notice of the foregoing and deny the Debtors' *Modified Plan*, on the foregoing grounds, and grant such other relief it deems just and proper.

Respectfully submitted.

Dated: September 9, 2019.

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